note a sealed instrument, it must be so recited in the body of the note. The mere addition of a seal after a signature is insufficient.

At one time a promissory note in printed form with the printed letters "L. S." contained in brackets after the maker's signature, as the only evidence that it had been sealed, was held to be a sealed instrument. *Giles v. Mauldin*, 7 Rich. Law 11 (S. C.). Proof of the signature of the maker of a note, is of itself presumptive evidence of a sealed instrument, *Merritt v. Cornell*, 1 E. D. Smith 335. Also it was held that a promissory note is properly sealed even though no scrolled seal be attached near the maker's name if it concludes with the words, "Witness my hand and seal." *McCarley v. Tippah County Sup'rs*, 58 Miss. 483. But now the tendency of the courts is to construe a promissory note as a sealed instrument only when both the body of the note is indicative of a sealed instrument and a scrolled seal is attached near the maker's signature. *Willhelm v. Partéone*, 72 Ga. 898; *Carter v. Penn*, 4 Ala. 140.

CARRIERS—NON-PAYMENT OF FARE—RIGHTS AND DUTIES OF PASSENGERS.—NORTON V. CONSOLIDATED RY. CO., 63 ATL. (CONN.), 1087.—*Held*, that a passenger who has been ejected from a trolley car for refusing to pay a cash fare, having presented a defective transfer, negligently issued, by carrier's agent, can merely recover nominal damages for such expulsion, but has a remedy for breach of contract.

The decisions on this subject seem to be in perfect accord. *Hibbard v. New York and E. R. Co.*, 15 N. Y. 455, laid down the doctrine "that the plaintiff who had a ticket not good for the trip he was making, and who declined to pay fare, cannot maintain an action for ejection from the train, but must look to the breach of contract." In a case where a passenger has a defective ticket, he should either pay his fare, or quietly leave the train and resort to his appropriate remedy for any damage sustained. *Peabody v. Oregon R. & Nav. Co.*, 21 Ore. 121; *Houston & Texas Cent. R. R. Co. v. Ford*, 53 Tex. 364. In *Chicago B. & Q. R. Co. v. Griffin*, 68 Ill. 499, it was decided that if a passenger is given a wrong ticket, it is his duty to pay a second fare and that his proper remedy is on an implied contract between him and the company.

CONSTITUTIONAL LAW—RIGHT TO JURY TRIAL—JURY OF SIX PERSONS.—BETTGE V. TERRITORY, 87 PAC. 897 (OKL.). *Held*, that a statute providing that a person charged with a misdemeanor may be tried in the probate court by a jury composed of six persons is in conflict with the Federal Constitution and is therefore void.

The federal courts and the courts of the territories construe the right to a trial by jury in criminal cases, guaranteed by the Federal Constitution, as meaning the right to have a jury of twelve persons the first time and in whatever court a person is put on trial. *Cooley's Constitutional Law*, 321. The rules adopted by the state courts, however, in construing the same provision in the constitutions of the several states are not so definite. By the weight of authority trial by a jury of less than twelve persons, even by consent, is mistrial. *Cancemi v. People*, 18 N. Y. 128; *Harris v. People*, 128 Ill. 585. But some jurisdictions hold that, in case of legislative enactment to that effect, trial by jury may be validly waived, especially as to misdemeanors. *State v. Worden*, 46 Conn. 349; *State v. Albee*, 61 N. H. 423. And in most states it is held that the right to trial by jury was not intended to apply to the pro-

secution of minor or trivial offences. *People v. Justices*, 74 N. Y. 406; *Byers v. Commonwealth*, 42 Pa. St. 89. Other courts make the distinction that it is valid to have a criminal trial without jury in the first instance when the defendant is given an unfettered right of appeal and trial by jury in the appellate court. *Jones v. Robbins*, 8 Gray (Mass.) 329; *Emporia v. Volmer*, 12 Kan. 622.

CORPORATIONS—STOCK—CONSTRUCTION OF BY-LAW.—GELLERMAN V. ATLAS FOUNDRY AND MACH. CO., et al. 87 Pac. (WASH.) 1059.—*Held*, that when, under a by-law of a corporation providing that the trustees may at their discretion declare dividends, a dividend is declared on the paid-up stock, a like dividend upon unpaid subscriptions for stock accrues and must be paid. Root, Crow & Hadley, JJ. *dissenting*.

This seems to be a new question in the American courts, though in accord with the English rule, *Cook on Stockholders and Corporation Law* § 540; *Oakbank Oil Co. v. Crum L. R.*, 8 App. 65. Its principle does not appear to be fully established in the United States, *Thompson v. Erie Ry. Co.* 42 How. Pr. 68 (N. Y); *Bailey v. Hannibal etc. Ry. Co.*, 2 Fed. Cas. No. 736. Equity will prevent any discrimination in the distribution of dividends among stockholders of the same class. *Cratty v. Peorie Law Library Assn.*, 76 N. E. (Ill.) 707. The class is determined by a pledge of profits in favor of certain shares in preference to others. *Taft v. Hartford etc. Ry. Co.* 8 R. I. 310. Against the main case it is held that the discretion of the trustees is controlling, *Jackson v. Newark Plankroad Co.*, 31 N. J. T. 277; *Williams v. Western U. Tel. Co.*, 93 N. Y. 162, with which, in the absence of fraud the courts will not interfere. *Bryan v. Sturgis Nat. Bank*, 90 S. W. (Tex.) 704. The By-law is a part of the contract. *Hazelton v. Belfast, etc. R. Co.*, 79 Me. 410; under which no dividends "accrue" until they are declared by the trustees. *Parks v. Automatic Bank Punch Co.*, 14 Daly (N. Y.) 424.

CRIMINAL LAW—EVIDENCE—EVIDENCE OF OTHER OFFENSES.—TOPOLEWSKI V. STATE, 109 N. W. 1037 (WIS.)—*Held*, on a prosecution for theft, the state claiming that the accused had conspired with another to steal property, it was error to admit evidence that the accused had, prior to the occurence in question, conspired with another person to steal prosecutor's property. In any transaction, evidence of a similar act is relevent only for the purpose of showing the intent. *U. S. v. Fleming*, 18 Fed. Reporter 907. Evidence of similar frauds on the part of the defendant is admissible for purpose of showing the *animus*. *People v. Hughes*, 36 N. Y. Supp. 493. In criminal prosecution, evidence should be confined to the offence charged, except where another act is so connected with it that its commission directly tends to prove some element of the alleged offense. *Paulson v. State*, 118 Wis. 89. Testimony as to a former offense in the same house, and with which the defendant was connected, is irrelevant, unless it shows *animus*. *Lightfoot v People*, 16 Mich. 507. And it is not competent for the prosecution to place before the jury facts tending to show another distinct offence, so as thereby to raise a presumption that the party is guilty of the offense charged. *Lightfoot v. People*, 16 Mich. 507.

CRIMINAL LAW—FAILURE OF DEFENDANT TO TESTIFY—COMMENT THEREON REVERSIBLE ERROR.—PERKINS V. TERRITORY, 87 PAC. 297 (OKL.). *Held*, where the defendant is on trial, charged with the commission of a crime and fails to